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Supreme Court of the United States

OCTOBER TERM, 1965

No. 346 //

CANADA PACKERS, LIMITED, PETITIONER,

vs.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED JULY 14, 1965
CERTIORARI GRANTED FEBRUARY 21, 1966

SUPREME COURT OF THE UNITED STATES

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[fol. A]

IN THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 14659

CANADA PACKERS, LIMITED, Plaintiff,

vs.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, THE CHESAPEAKE AND OHIO RAILWAY COMPANY, CHICAGO, SOUTH SHORE AND SOUTH BEND RAILROAD, DETROIT, TOLEDO AND IRONTON RAILROAD COMPANY, ELGIN, JOLIET AND EASTERN RAILWAY COMPANY, GRAND TRUNK WESTERN RAILROAD COMPANY, NEW YORK CENTRAL RAILROAD COMPANY, THE NEW YORK, CHICAGO AND ST. LOUIS RAILROAD COMPANY, WABASH RAILROAD COMPANY, Defendants.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

Honorable Hubert L. Will, District Judge.

Appendix to Brief of Defendants-Appellants—Filed June 19, 1964

[File endorsement omitted]

[fol. 4]

IN THE UNITED STATES DISTRICT COURT

(Caption—63 C 1495)

COMPLAINT—Filed August 21, 1963

Comes now the plaintiff, Canada Packers, Limited, by its undersigned attorney, and alleges:

1. That this is an action to enforce an order of the Interstate Commerce Commission and this court has

jurisdiction under the provisions of Section 16(2) of the Interstate Commerce Act, 49 U. S. C. A. Sec. 16(2).

2. That plaintiff is a corporation duly organized and existing under the laws of the Dominion of Canada, with principal place of business at Toronto, Ontario. That plaintiff is engaged, among other things, in the manufacture of fertilizer at plants located in the Provinces of New Brunswick, Ontario and Quebec, Canada.

3. That each of the above-named defendants is a common carrier by railroad in interstate commerce and as such is subject to the Interstate Commerce Act, 49 U. S. C. A. Sec. 1, et seq.

4. That defendant The Atchison, Topeka and Santa Fe Railway Company has its principal operating office in and its road runs through the Northern District of Illinois.

5. That during the period January 5, 1948 through May 5, 1948, defendants transported numerous carload shipments of potash from Carlsbad and Loving, New Mexico, to plaintiff at Toronto, West Toronto and Welland, Ontario; Montreal, Quebec; and St. John, New Brunswick, Canada.

6. That defendants demanded and collected, and plain-
[fol. 5] tiff paid and bore, rates and charges on said shipments which were unjust and unreasonable in violation of Section 1 of said Interstate Commerce Act.

7. That in 1950 and within the applicable period of limitations, plaintiff filed an informal complaint with the Interstate Commerce Commission alleging that said rates and charges were unlawful and seeking money damages.

8. That action on said informal complaint was deferred awaiting decisions in similar cases then pending before the Interstate Commerce Commission involving like rates and charges.

9. That on or about May 13, 1959, plaintiff was informed by said Commission that plaintiff's informal complaint was not susceptible of informal handling and plaintiff on October 28, 1959 and within the applicable period of limitations, filed a formal complaint with said Commission alleging said rates and charges were unlawful and incorporating the foresaid informal complaint by reference. Copy of said formal complaint, identified as Exhibit A, is attached hereto and made a part hereof.

10. That Division 2 of said Commission, in its report of May 24, 1961, found said rates unjust and unreasonable in violation of Section 1 of the Interstate Commerce Act and determined just and reasonable rates and further found, plaintiff was entitled to reparation in the amount of the difference between the charges collected and those that would have accrued at the rates found just and reasonable. Copy of said report, identified as Exhibit B, is attached hereto and made a part hereof.

[fol. 6] 11. That said defendants filed a petition for reconsideration of the report and order of May 24, 1961 which petition was denied by the Commission by order of October 9, 1961. Copy of said order, identified as Exhibit C, is attached hereto and made a part hereof.

12. That on August 28, 1962 the Commission, by its chairman, having under consideration Division 2's report of May 24, 1961 and certain statements, known as Rule 1.100 Statements, filed by plaintiff and agreed to by the defendants therein, showing, among other things, the dates the charges were paid on the ship-

ments in question, entered an order authorizing and directing said defendants to pay plaintiff specified amounts of reparation plus interest at the rate of four percent per annum, from the dates of payment of the charges assailed. Copy of said order, identified as Exhibit D, is attached hereto and made a part hereof.

13. That the order of August 28, 1962 (Exhibit D) directed the defendants parties to this complaint and their Canadian connecting carriers, the Canadian National Railways and the Canadian Pacific Railway Company, to pay plaintiff reparation in principal amounts totaling $6,694.56 plus interest as aforesaid.

14. That defendants herein have paid to plaintiff reparation totaling $5,304.01 plus interest but have refused and continue to refuse to fully comply with said order by withholding payment to plaintiff of $1,390.55 plus interest.

15. That by reason of defendants' wrongful refusal to comply with the Commission's order of August 28, 1962, plaintiff is damaged in the sum of $1,390.55 plus interest.

[fo' 7] Wherefore, plaintiff prays judgment against defendants for:

(a) Damages in the sum of $1,390.55 plus interest at the rate of four percent per annum, from the dates on which payment of the charges assailed were paid, to and including the date of judgment herein.

(b) Allowance of a reasonable attorney's fee to be taxed as part of the costs of this action as authorized by Section 16(2) of said Interstate Commerce Act.

(c) Plaintiff's costs of this action, and such other relief as this court deems proper in the premises.

Canada Packers, Limited, Plaintiff, By Charles B. Myers, Its Attorney.

Charles B. Myers, 611 Field Building, Chicago 3, Illinois, CE. 6-5757.

[fol. 8]

EXHIBIT A TO COMPLAINT

BEFORE THE INTERSTATE COMMERCE COMMISSION

COMPLAINT

CANADA PACKERS, LIMITED,

v.

ATCHISON, TOPEKA AND SANTA FE RAILWAY

COMPANY, ET AL.

A. C. Listak,
R. W. Schapanski,
111 North Canal Street,
Chicago 6, Illinois,

Practitioners.

Dated at Chicago This 28th Day of October, 1959.

[fol. 9]

BEFORE THE INTERSTATE COMMERCE COMMISSION

COMPLAINT

CANADA PACKERS, LIMITED, Complainant,

v.

ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY; CANADIAN NATIONAL RAILWAYS; CANADIAN PACIFIC RAILWAY COMPANY; THE CHESAPEAKE AND OHIO RAILWAY COMPANY; CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY; CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY; CHICAGO, SOUTH SHORE AND SOUTH BEND RAILROAD; DETROIT, TOLEDO AND IRONTON RAILROAD COMPANY; ELGIN, JOLIET AND EASTERN RAILWAY COMPANY; GRAND TRUNK WESTERN RAILROAD COMPANY; GREEN BAY AND WESTERN RAILROAD COMPANY; THE NEW YORK CENTRAL RAILROAD COMPANY; THE NEW YORK, CHICAGO AND ST. LOUIS RAILROAD COMPANY; SOUTHERN PACIFIC COMPANY; TRONA RAILWAY COMPANY; UNION PACIFIC RAILROAD COMPANY; WABASH RAILROAD COMPANY, Defendants.

The complaint of the above-named complainant respectfully shows—

I.

That complainant is a corporation engaged in the meat packing business and various other products, including the manufacture of fertilizer, operating plants at various locations throughout the Dominion of Canada, with principal office at Toronto, Ontario.

[fol. 10]

II.

That the defendants above named are common carriers by railroad engaged in the transportation of property between points in the States of California and New Mexico

on the one hand and points in the Provinces of New Brunswick, Ontario and Quebec in the Dominion of Canada on the other, and as such defendants are subject to the provisions of the Interstate Commerce Act.

III.

That during the period of January 5, 1948 through May 5, 1948 numerous carload shipments were made to complainant at St. John, New Brunswick; Toronto, Ontario; West Toronto, Ontario; Welland, Ontario and Montreal, Quebec, which originated at Trona, California; Loving and Carlsbad, New Mexico, variously described as Potash, Potash Salts, Muriate or Potash, Sulphate of Potash Magnesia, Sulphate of Potassium of Magnesia, Manure Salts, all of which are commonly referred to as Potash.

That freight charges were paid by complainant on basis of the applicable commodity rates published in Atchison, Topeka & Santa Fe Railway Company Tariff 15169-F, ICC 14478, and Transcontinental Freight Bureau Tariff 3-S, Agent L. E. Kipp's ICC 1519, increased by 20% under Tariff of Emergency Charges X-166, Agent L. E. Kipp's ICC A-3684, Supplement 2, Item 10-A thereof, which became effective January 5, 1948.

That effective May 6, 1948 in Tariff of Increased Rates and Charges X-166-A, Agent L. E. Kipp's ICC A-3691, in Item 203 a maximum increase of $1.60 per net ton was published to apply on Potash pursuant to the third report in *Ex Parte 166, Increased Freight Rates, 1947, 270 ICC 93,* finding No. 14.

[fol. 11] IV.

That two informal complaints were filed to cover the shipments described in Paragraph III hereof as follows—ICC Informal Complaint No. 179998, covering the shipments originating at Trona, California, on which the Commission advised complainant under date of June 30, 1959 that the file was being closed based on letter received from

Mr. E. J. Larson, F.T.M., Southern Pacific Company, San Francisco, his File F-3057-1-2.

ICC Informal Complaint No. 180056, covering the shipments made from Carlsbad and Loving, New Mexico, on which the Commission advised complainant under date of May 13, 1959, that its file was being closed in accordance with letter received from Mr. H. C. Vincent, T.M., Panhandle & Santa Fe Railway Company, Amarillo, Texas, his File M-4062-2926.

That the papers in these informal complaints should be incorporated with this formal complaint.

V.

That on the traffic described in Paragraph III hereof the applicable joint through rates in effect during the period of January 5, 1948 through May 5, 1948 were unreasonable to the extent that the interim increase of 20% exceeded the maximum increase of $1.60 per net ton.

VI.

That by reason of the facts stated in the aforementioned paragraphs, the complainant has been subjected to rates which were, when exacted, unjust and unreasonable, in violation of Section 1 of the Interstate Commerce Act. That complainant has been injured thereby to its damage in the sum of seven thousand ninety-one and 48/100 ($7091.48) dollars.

[fol. 12] Wherefore, complainant prays that defendants be severally required to answer charges herein; that after due hearing and investigation an order be made commanding said defendants, and each of them, to pay to complainant by way of reparation for the unlawful charges hereinbefore alleged, the sum of $7091.48 or such other sum as in view of the evidence to be adduced herein the Commission shall determine that complainant is entitled to as an award of damages under the provisions of said Act for violation

thereof, and that such other and further order or orders be made as the Commission may consider proper in the premises.

Dated at Chicago, Illinois, this 28th day of October, 1959.

Canada Packers, Limited, Toronto 9, Ontario;

A. C. Listak, Practitioner, 111 North Canal Street, Chicago 6, Illinois;

R. W. Schapanski, Practitioner, 111 North Canal Street, Chicago 6, Illinois.

[fol. 13]

EXHIBIT B TO COMPLAINT

INTERSTATE COMMERCE COMMISSION

Date of Service
June 5, 1961

No. 33261

CANADA PACKERS, LIMITED,

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY *et al.*

Decided May 24, 1961

Rates charged on potash, in carloads from Carlsbad and Loving, N. Mex., and Trona, Calif., to Toronto, West Toronto, and Welland, Ontario, Montreal, Quebec, and St. John, New Brunswick, Canada, found to have been unjust and unreasonable. Just and reasonable rates determined, and reparation awarded.

N. C. Jensen, A. C. Listak, and R. W. Schapanski for complainant.

Charles W. Burkett, Jr., Harvey Huston, and J. Edgar McDonald for defendants.

Report of the Commission

Division 2, Commissioners Freas, Goff, and Herring.

By Division 2:

Exceptions to the report recommended by the examiner were filed by the defendants, and the complainant replied. [fol. 14] Exceptions and requested findings not specifically discussed in this report nor reflected in our findings or conclusions have been considered and found not justified.

By complaint filed on October 30, 1959, the complainant, a corporation with its principal office in Toronto, Ontario, Canada, alleges that the rates[1] charged on numerous carload shipments of potash from Trona, Calif., and Carlsbad and Loving, N. Mex., to the Canadian destinations of St. John, New Brunswick; Welland, Toronto, and West Toronto, Ontario; and Montreal, Quebec, during the period January 5 through May 5, 1948, were unjust and unreasonable to the extent that they included the 20 percent increases authorized on an interim basis in Ex Parte No. 166,[2] instead of the maximum increase of $1.60 which was finally authorized in that proceeding. Reparation only is sought.

On January 16, 1950, two informal complaints were filed with this Commission covering the shipments here concerned. One alleged to cover 132 shipments from Carlsbad and Loving to St. John, Montreal, West Toronto, and Welland was declined on May 13, 1959, as not susceptible of informal adjustment. The other, covering 5 shipments from Trona to Toronto and St. John, was declined on June 30, 1959. Both of these informal complaints had been

[1] Rates are stated per net ton.

[2] *Increased Freight Rates, 1947*, 269 I. C. C. 33, 270 I. C. C. 81, 270 I. C. C. 93, and 270 I. C. C. 403.

held in abeyance pending disposition of *Consolidated Rendering Co.* v. *Atchison, T. & S. F. Ry. Co.*, 287 I. C. C. 673, 300 I. C. C. 87, hereinafter called the *Consolidated Rendering* case or decision, and related proceedings, which embraced the same principal issue and the same commodity, [fol. 15] among others. Shipments covered by the informal complaints which were delivered or tendered for delivery prior to January 16, 1948, are barred from our consideration by section 16(3) of the Interstate Commerce Act.

Pending a final decision in Ex Parte No. 166, the Commission authorized two interim increases. The first, an interim increase of 10 percent effective on October 13, 1947, was superseded by an interim increase of 20 percent on January 5, 1948. Subsequently, the Commission authorized permanent increases ranging from 20 to 30 percent, subject to maximum increases or holddowns on certain commodities, including a $1.60 holddown in the increases on fertilizer materials, which include the instant commodity. This maximum became effective on May 6, 1948.

In its exhibit No. 1 the complainant lists 136[3] carloads of potash as having been shipped during the reparation period, as follows: 81, 20, 22, and 7 from Carlsbad to Toronto,[4] Welland, Montreal, and St. John, respectively, 4 and 1 from Trona to Toronto, and St. John, respectively, and 1 from Loving to St. John. The shipments ranged in weight from 80,100 to 122,800 pounds averaging 102,399 pounds, and crossed the border apparently at several eastern points, including Port Huron or Detroit, Mich., and Buffalo, N. Y.

In the table below are set forth the basic rates on this commodity which were applicable prior to October 13, 1947; from that date as a result of the first interim in-

[3] Although references are made at various points in the evidence and pleadings to 138 carloads, only 136 carloads are listed in the exhibit.

[4] The destination of the 81 shipments is also referred to at times as West Toronto.

crease authorized in Ex Parte No. 166; from January 5, 1948, as a result of the second interim increase in that pro- [fol. 16] ceeding; and on May 6, 1948, as a result of the increase and holddown finally authorized therein:

TABLE I.

From Trona, Calif., to—	Basic rates	Rates effective on Oct. 13, 1947	Jan. 5, 1948	May 6, 1948
Toronto, Ont.	$15.00	$16.50	$18.00	$16.60
St. John, N. B.	18.20	20.02	21.84	19.80
From Carlsbad— Loving, N. Mex. to—				
Toronto, Ont.	12.20	13.42	14.64	13.80
Welland, Ont.	12.20	13.42	14.64	13.80
Montreal, Que.	14.40	15.84	17.28	16.00
St. John, N. B.	17.00	18.70	20.40	18.60

The complainant paid and bore the charges complained of at the rates which were applicable during the reparation period. Its basic contention is that those rates were unreasonable to the extent that they exceeded the basic rates plus the maximum increase of $1.60 finally authorized in Ex Parte No. 166, and that all that is sought here is the same treatment as was accorded to other shippers of potash from the same origin areas to other destinations during the same interim period following the decision on further hearing in the *Consolidated Rendering* case.

In the *Consolidated Rendering* case, the Commission found that the rates charged on shipments of potash, *inter alia,* moved from Carlsbad and Trona, among other origins, to various destinations during the period January 5 through May 5, 1948, were unjust and unreasonable to the extent that they included Ex Parte No. 166 interim increases in excess of those finally authorized in that proceeding. Reparation was awarded on that basis.

The defendants claim that the foregoing decision has no relevance to the instant proceeding, for the reason that

the charges here concerned "were not computed on prescribed basic rates." The inference is that all of the rates on this commodity which were found unreasonable in the *Consolidated Rendering* case had been basically prescribed by the Commission. This is incorrect. On page 682 of the [fol. 17] first report in that proceeding appears the following statement:

> Rates were not prescribed for application on potash destined to Canada, but the rates to Canada were based on prescribed rates to points in the United States. The rates assailed to Canadian points were relatively somewhat higher than the prescribed rates to destinations in the United States.

The instant record shows that reparation on the prescribed basis was later ordered paid in that proceeding on shipments to at least one Canadian destination. While most of the rates found unreasonable therein had been basically prescribed as maximum reasonable, this was not true of a number of other rates which also were found unreasonable and for which the same reparation basis was prescribed.

While the defendants have cited *Virginia-Carolina Chemical Corp.* v. *Alabama, G. S. R. Co.*, 306 I. C. C. 290, and *Western Peat Co.* v. *Great Northern Ry. Co.*, 308 I. C. C. 541, in support of their contention that the *Consolidated Rendering* decision has no application in the instant proceeding, these citations are not in point here. Neither of these cases holds that the Commission's refusal to grant reparation stems from the fact that the *Consolidated Rendering* decision required such a result because the assailed rate was not on a prescribed basis. In the *Western Peat Co.* case, the Commission's decision was based on the fact that the evidence before it would not support a finding that the assailed rates were unjust and unreasonable. The complainant had the burden of showing that its own rates were unjust and unreasonable, and it had not met that burden

simply by showing that awards of reparation had been made in other cases where greater interim increases than those authorized in final general increase proceedings were applied. In the *Virginia-Carolina* case, the Commission found that the rate comparisons submitted by the complainant were inappropriate and found, in effect, that since the [fol. 18] rate in question compared favorably with a prescribed rate to a more appropriate destination, it had not been shown to be unjust and unreasonable. In neither case did the Commission deny reparation solely for the reason that the charges involved did not include prescribed basic rates.

Reasonable maximum rates from the three origins here concerned to territories east of the Rocky Mountains, including official territory, were prescribed in three proceedings: No. 29202, *Potash Co. of America* v. *Aberdeen & R. R. Co.*, 264 I. C. C. 401; *American Potash & Chemical Corp.* v. *Aberdeen & R. R. Co.*, 258 I. C. C. 743, 262 I. C. C. 157; and *Potash Co. of America* v. *Aberdeen & R. R. Co.*, 258 I. C. C. 109. The Commission has no power to prescribe rates for the future to destinations in Canada and such rates have not been prescribed to the instant destinations.

Based on short-line distances and an average load of 51.15 tons per car, the basis used in the *Consolidated Rendering* case, the following table shows the distances and rates from Carlsbad, a representative origin, and the car-mile earnings to selected destinations on basis of which reparation was awarded in that proceeding, as compared with the rates here sought on the same basis:

TABLE II.

From Carlsbad, N. Mex., to—	Distance (miles)	Rates[1] assailed	Reparation rates[2]	Rates here sought[3]	Car-mile earnings under basis sought (cents)
Detroit, Mich.	1,515	$13.32	$12.70	$	42.9
Buffalo, N. Y.	1,747	14.04	13.30		38.9
Welland, Ont.	1,728	14.64		13.80	40.8
Toronto, Ont.	1,741	14.64		13.80	40.5
New York, N. Y.	2,100	15.12	14.20		34.6
Montreal, Que.	2,075	17.28		16.00	39.4
Vanceboro, Maine	2,461	17.28	16.00		33.3
St. John, N. B.	2,551	20.40		18.60	37.3
Caribou, Maine	2,589	18.60	17.10		33.8

1. Basic rates plus the 20 percent interim increase authorized in Ex Parte No. 166.

2. Rates incorporating the final increase authorized in Ex Parte No. 166, on which basis reparation was awarded in the *Consolidated Rendering* case.

3. Basic rates to the Canadian destinations, plus the maximum increase finally authorized in Ex Parte No. 166.

[fol. 19] Table II shows that to destinations in the northeastern part of the United States the rates on the basis prescribed for reparation purposes in the *Consolidated Rendering* case, and the car-mile revenue thereunder, are lower than the corresponding rates here sought, and the earnings thereunder, to these Canadian destinations. This is further illustrated by the rates to four other representative eastern destinations, Baltimore, Md., Carteret, N. J., Houlton, Maine, and Lowell, Mass., to which the car-mile earnings resulting from the prescribed reparation basis ranged from 34 to 37.2 cents for distances ranging from 1,747 to 2,551 miles. The basis sought here would produce car-mile earnings ranging from 40.8 cents for 1,728 miles to 37.3 cents for 2,551 miles. Over the actual routes used by these shipments, the car-mile earnings on the basis sought

would range from 39.9 cents for 1,769 miles to 26 cents for 3,900 miles.

In 1943, the rates from Carlsbad, for example, were $13.20 to Montreal, $12.80 to New York, and $13.80 to Boston. Thus, at that time the Montreal rates were 40 cents higher than that to New York and other points in trunk-line territory and 60 cents under that to Boston and other points in New England. As a result of the decision in No. 29202, *supra*, the rate to New York was reduced to $11.40, $1.80 less than to Montreal, and the rate to Boston was reduced to $11.90, $1.30 under Montreal. So also, in 1943 the rate from Carlsbad to Buffalo, Toronto, and Welland was $11, reflecting the fact that the short-line distances to all three destinations are approximately the same. Following the No. 29202 reductions, the rate to Buffalo became $10.50, notwithstanding that the distance to Buffalo is greater than that to Welland and Toronto, and that over some of the routes Welland and Toronto are intermediate to Buffalo.

The defendants except to the recommended finding of the [fol. 20] examiner as to the measure of damages, claiming that even if a reparation award is appropriate, it may not be measured "in a manner beyond the jurisdiction of the Commission." They contend that the reparation award may not exceed the award made in the *Consolidated Rendering* case to the border points at which these shipments crossed into Canada.

As has been pointed out, in the *Consolidated Rendering* case reparation was awarded on shipments which had moved, as here, at joint through rates to Canadian destinations. The law in this respect is correctly stated in *Hoffman-Taff, Inc.* v. *St. Louis-S. F. Ry. Co.*, 279 I. C. C. 710, 712, wherein Division 3 said:

> . . . It is well settled that railroads within this country have a clear alternative in respect of their participation in international traffic. They may publish reasonable and lawful rates applicable to or from the border, in which event they are answerable only for those rates,

or they may participate in joint through international rates and become jointly or severally liable for any unlawfulness found in such rates. • • •

See also, *Cyanamid and Cyanide from Niagara Falls*, 155 I. C. C. 488; *Western Peat Co.* v. *Illinois Central R. Co.*, 297 I. C. C. 273, 275; *News Syndicate Co.* v. *N. Y. C. R. R.*, 275 U. S. 179; and *Lewis, etc. Co.* v. *Southern Pac. Co.*, 283 U. S. 654.

We find that the assailed rates were unjust and unreasonable to the extent that they exceeded rates from Carlsbad and Loving of $13.80 to Toronto, West Toronto, and Welland; $16 to Montreal, and $18.60 to St. John; and from Trona, of $16.60 to West Toronto and $19.80 to St. John.

We further find that the complainant made the shipments as described, paid and bore the charges thereon, was damaged thereby, and is entitled to reparation in the [fol. 21] amount of the difference between the charges collected and those that would have accrued at the rates herein found just and reasonable. The complainant should comply with rule 1.100 of the General Rules of Practice.

By the Commission, division 2.

Harold D. McCoy,
Secretary.

(Seal)

EXHIBIT C TO COMPLAINT

Service Date
October 17, 1961

ORDER

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 9th day of October, A. D. 1961.

No. 33261

CANADA PACKERS, LIMITED,

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.

Upon consideration of the record in the above-entitled proceeding, petition, filed July 5, 1961, of defendants for reconsideration of the report and order of Division 2, decided May 24, 1961, and petition, filed July 5, 1961, of defendants, Canadian Pacific Railway Company and Canadian National Railway Company, for modification of decision and dismissal as parties defendant herein, complainant's reply to petition for reconsideration, filed July 17, 1961, and reply of defendants other than Canadian Pacific and Canadian National to petition for modification and dismissal, filed July 24, 1961;

[fol. 22] *It is ordered,* That the said petitions be, and they are hereby, denied, for the reason that the matters submitted in support thereof do not constitute substantial and material grounds to warrant granting the action sought.

By the Commission.

Harold D. McCoy,
Secretary.

(Seal)

EXHIBIT D TO COMPLAINT

Service Date
September 4, 1962

ORDER

INTERSTATE COMMERCE COMMISSION

No. 33261

CANADA PACKERS, LIMITED,

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.

In the Matter of Awarding Reparation Based on Rule 1.100 Statements Filed Herein.

Present: Rupert L. Murphy, Chairman, to whom the above-entitled matter has been assigned for action thereon.

It appearing, That on May 24, 1961, the Commission, by division 2, intered its report in the above-entitled proceeding which report is hereby referred to and made a part hereof, and this proceeding now coming on for further consideration on the question of reparation, and the parties having filed agreed statements with respect to the shipments in question, showing, among other things, the dates on which payment of the charges assailed was made; we [fol. 23] find that complainant Canada Packers, Limited is entitled to awards of reparation from the defendants named in the following table, insofar as the transportation took place over their lines in the United States, in the amounts set opposite their respective names, with interest:

Defendants	Amounts
ATSF-CSS&SB-GTW-CNR	$494.96
ditto	88.24
ATSF-GTW-CNR	328.71
ditto	260.69
ditto	159.76
ditto	126.12
ATSF-EJ&E-C&O-CPR	311.38
ATSF-CSS&SB-NYC-CPR	320.11
ATSF-CSS&SB-WAB-CPR	139.09
ATSF-CSS&SB-NYC-CPR	421.16
ditto	449.07
ditto	427.18
ATSF-GTW-CNR	140.82
ATSF-CSS&SB-GTW-CNR	302.53
ditto	348.67
ATSF-CSS&SB-WAB-GTW-CNR	95.84
ATSF-CSS&SB-WAB-CPR	800.44
ATSF-CSS&SB-WAB-CPR	198.91
ATSF-CSS&SB-NYC-CPR	411.30
ATSF-NYC&STL-DT&I-CPR	65.34
ATSF-CSS&SB-GTW-CNR	522.81
ATSF-EJ&E-C&O-CPR	180.54
ATSF-CSS&SB-NYC-CPR	100.89
TRONA-SP-UP-CMSTP&P-GB&W-PM (C&O)-CPR	70.38
TRONA-SP-CRIP-GTW-CNR	257.41
TRONA-SP-UP-CMSTP&P-GB&W-PM (C&O)-CPR	70.13

It is therefore ordered, That the defendants named in each of the groups shown in the above table (the full corporate names of which are shown in the attached index of abbreviations), be, and they are hereby, authorized and [fol. 24] directed to pay unto the complainant, Canada Packers, Limited on or before October 12, 1962, the amounts set opposite their respective names in said table, with inter-

est thereon at the rate of 4 percent per annum, from the respective dates of payment of the charges assailed shown in the aforesaid agreed statements, as reparation on account of unreasonable rates charged and collected for the transportation of numerous carloads of potash during the period January 5 to May 5, 1948, both dates inclusive, from Carlsbad and Loving, N. Mex., and Trona, Calif., to Toronto, West Toronto, and Welland Jct., Ont., Montreal, Que., and St. John, N. B., Canada, insofar as the transportation took place in the United States.

Dated at Washington, D. C., this 28th day of August, A. D. 1962.

By the Commission, Chairman Murphy.

Harold D. McCoy,
Secretary.

(Seal)

[fol. 25]

Index of Abbreviations.

ATSF	—The Atchison, Topeka and Santa Fe Railway Company
CNR	—Canadian National Railways
CPR	—Canadian Pacific Railway Company
C&O	—The Chesapeake and Ohio Railway Company
CRIP	—Chicago, Rock Island and Pacific Railroad Company
CMSTP&P	—Chicago, Milwaukee, St. Paul and Pacific Railroad Company
CSS&SB	—Chicago, South Shore and South Bend Railroad
DT&I	—Detroit, Toledo and Ironton Railroad Company
EJ&E	—Elgin, Joliet and Eastern Railway Company
GTW	—Grand Trunk Western Railroad Company
GB&W	—Green Bay and Western Railroad Company
NYC	—New York Central Railroad Company
NYC&STL	—The New York, Chicago and St. Louis Railroad Company
SP	—Southern Pacific Company
TRONA	—Trona Railway Company
UP	—Union Pacific Railroad Company
WAB	—Wabash Railroad Company

[fol. 26]

IN THE UNITED STATES DISTRICT COURT

ANSWER—Filed October 7, 1963

The defendants, by and through their attorneys, Floyd Stuppi, Gus Svolos, and Harvey Huston, hereby answer the complaint heretofore filed, stating:

1. Defendants admit the allegations of paragraphs 1, 3, 5, 7, 8, 9, 11 and 13 of the complaint.

2. Defendants are without information concerning the allegations in paragraph 2, and therefore neither admit nor deny such allegations but demand proof thereof.

3. Defendants deny that The Atchison, Topeka and Santa Fe Railway Company's principal operating office is in Chicago, and admit all other allegations of paragraph 4.

4. Defendants deny the allegations of paragraph 6.

5. Defendants deny that the rates referred to in paragraph 10 were unjust or unreasonable, and admit that Exhibit B to the complaint is a copy of the Interstate Commerce Commission report referred to.

6. Defendants deny the allegation in paragraph 12 that defendants agreed to the Rule 1.100 statements, and state that defendants merely certified that the information contained in said statements was compiled accurately. Defendants admit all other allegations of paragraph 12.

7. Defendants admit the allegations in paragraph 14 concerning moneys paid and moneys withheld but deny that defendants refused to comply fully with the provisions of the order referred to, and aver that said order is beyond the statutory powers of the Interstate Commerce Commission if interpreted in the manner sought by complainant.

8. Defendants deny the allegations of paragraph 15.

[fol. 27] Wherefore, defendants pray that the relief and damages sought by plaintiff be denied and that judgment be entered in their favor and for their costs.

The Atchison, Topeka and Santa Fe Railway Company, The Chesapeake and Ohio Railway Company, Chicago, South Shore and South Bend Railroad, Detroit, Toledo and Ironton Railroad Company, Elgin, Joliet and Eastern Railroad Company, Grand Trunk Western Railroad Company, New York Central Railroad Company, The New York, Chicago and St. Louis Railroad Company, Wabash Railroad Company, *Defendants.*
By Floyd Stuppi, Gus Svolos, Harvey Huston.

Floyd Stuppi, Gus Svolos, Harvey Huston, 1211 Railway Exchange, 80 East Jackson Boulevard, Chicago 4, Illinois, HArrison 7-4900.

[fol. 28]

IN THE UNITED STATES DISTRICT COURT
Northern District Illinois

(Date) December 16, 1963

Preliminary pre-trial conference held. Cause submitted to the Court on stipulation of facts & briefs, said stipulation to be filed by Jan. 15, 1964, plaintiff's brief to be filed by Jan. 30, 1964, defendants' brief to be filed by Feb. 10, 1964 and plaintiff's reply brief to be filed by Feb. 17, 1964.

Will, J.

IN THE UNITED STATES DISTRICT COURT

STIPULATION OF FACTS—Filed January 15, 1964

1.

Plaintiff is a corporation duly organized and existing under the laws of the Dominion of Canada, with its principal place of business at Toronto, Ontario. Plaintiff is engaged, among other things, in the manufacture of fertilizer at plants located in the Provinces of New Brunswick, Ontario, and Quebec, Canada.

2.

Each of the defendants is a common carrier by railroad in interstate commerce.

3.

On July 3, 1947, the defendants, and substantially all other railroads of the United States, petitioned the Interstate Commerce Commission for an increase in their rates and charges on interstate and foreign commerce.

[fol. 29]

4.

The Commission, in *Ex Parte 166, Increased Freight Rates, 1947*, 269 I. C. C. 33, 54, authorized an interim increase of 10 per cent in rates and charges, which became effective October 13, 1947. That increase was superseded by an interim increase of 20 per cent authorized in 270 I. C. C. 81, 90, which became effective January 5, 1948.

5.

Thereafter, in a later report in that proceeding in 270 I. C. C. 93, 100, the Commission authorized permanent increases on interstate and foreign commerce, ranging from 20 to 30 per cent, subject to maximum increases or hold-

downs on certain commodities, including a $1.60 per ton of 2,000 pounds holddown in the increases on fertilizer materials, including potash. This maximum increase became effective May 6, 1948.

6.

During the period January 5, 1948, through May 5, 1948, quantities of potash were shipped by rail from Carlsbad and Loving, New Mexico, to destinations in Canada at which were located plants of the plaintiff. The shipments moved within the United States over lines of railroad operated by the defendants. At various points the shipments crossed the border into Canada. From the border points to the destinations in Canada the shipments moved over lines of railroad operated by the Canadian National Railways and by the Canadian Pacific Railway Company, neither of which is a defendant in this case. The freight charges covering transportation from origin to destination were collected by the Canadian National Railways and the Canadian Pacific Railway Company, and were distributed among those carriers and the defendants on the basis of interline settle-[fol. 30] ments. On all of these shipments defendants assessed the applicable single-factor, joint through rates from the mentioned United States origins to the described destinations in eastern Canada, plus the 20 per cent interim increase.

7

7.

Eighty-one of the shipments originated at Carlsbad, New Mexico, and were delivered to plaintiff at Toronto, Ontario, Canada.

Twenty of the shipments originated at Carlsbad, New Mexico, and were delivered to plaintiff at Welland, Ontario, Canada.

Twenty-two of the shipments originated at Carlsbad, New Mexico, and were delivered to plaintiff at Montreal, Quebec, Canada.

Seven of the shipments originated at Carlsbad, New Mexico, and were delivered to plaintiff at Saint John, New Brunswick, Canada.

One of the shipments originated at Loving, New Mexico, and was delivered to plaintiff at Saint John, New Brunswick, Canada. The freight rate applicable from Loving was and is the same as the rate from Carlsbad.

8.

Plaintiff paid and bore the rates and charges on all of said shipments.

9.

All of the shipments in question crossed the international border at Detroit or at Port Huron, Michigan. In the case of shipments to Saint John via the Canadian Pacific, the shipments re-entered the United States at Megantic, Quebec, and recrossed at Vanceboro, Maine. Defendants' tariffs also authorized routes via Buffalo, New York, to all of the destinations in question; in addition, shipments [fol. 31] destined to Saint John, New Brunswick, were permitted to cross the border at Vanceboro, Maine, and shipments to Montreal, Quebec, at Constable, New York.

10.

In 1950 and within the applicable period of limitations, plaintiff filed an informal complaint with the Commission alleging that said rates and charges were unlawful to the extent that the basic rates in effect prior to October 13, 1947, plus the 20 per cent interim increase exceeded said basic rates plus the permanent $1.60 per ton maximum hold-down authorized by the Commission.

11.

Action on the informal complaint was deferred, awaiting decisions in similar cases then pending before the

Commission involving like rates and charges, including *Consolidated Rendering Co.* v. *Atchison, T. & S. F. Ry. Co.*, 287 I. C. C. 673, 300 I. C. C. 87.

12.

On or about May 13, 1959, plaintiff was informed by the Commission that its informal complaint was not susceptible of informal handling, and plaintiff, on October 28, 1959, and within the applicable period of limitations, filed a formal complaint with the Commission alleging said rates and charges were unreasonable in violation of Section 1 of the Interstate Commerce Act and incorporating the aforesaid informal complaint by reference.

13.

In 1944 and 1946, the Commission had considered the lawfulness of potash rates from the two origins here involved to destinations in eastern United States. It found the rates [fol. 32] unreasonably high and prescribed reasonable maximum rates in No. 29202, *Potash Co. of America* v. *Aberdeen & R. R. Co.*, 264 I. C. C. 401, and *Potash Co. of America* v. *Aberdeen & R. R. Co.*, 258 I. C. C. 109.

The table which follows shows the rates to selected United States destinations from Carlsbad, New Mexico, as a typical origin, both before and after the prescription by the Commission and compares them to rates to the Canadian destination here involved.

FROM CARLSBAD, N. M.

Rates in Cents Per Ton of 2000 Lbs.

To	Miles	Rates Prior to ICC Cases	I. C. C. Reduced Rates Without X162*	I. C. C. Reduced Rates With X162	Rates for Period Jan. 5 to May 5, 1948 X166 (20%)	$1.60 Ton Max.	Sought
Welland, Ont.	1728	1100	1100	1220	1464		1380
Buffalo, N. Y.	1747	1100	1050	1170	1404	1330	
Spread	—19	-0-	+50	+50	+60	+134	+50
Toronto, Ont.	1741	1100	1100	1220	1464		1380
Buffalo, N. Y.	1747	1100	1050	1170	1404	1330	
Spread	—6	-0-	+50	+50	+60	+134	+50
Montreal, Que.	2075	1320	1320	1440	1728		1600
New York, N. Y.	2100	1280	1140	1260	1512	1420	
Spread	—25	+40	+180	+180	+216	+308	+180
Montreal, Que.	2075	1320	1320	1440	1728		1600
Boston, Mass.	2216	1380	1190	1310	1572	1470	
Spread	—141	—60	+130	+130	+156	+258	+130
Montreal, Que.	2075	1320	1320	1440	1728		1600
Portland, Me.	2288	1380	1190	1310	1572	1470	
Spread	—213	—60	+130	+130	+156	+258	+130
St. John, N. B.	2551	1580	1580	1700	2040		1860
Houlton, Me.	2539	1600	1410	1530	1836	1690	
Spread	+12	—20	+170	+170	+204	+350	+170
St. John, N. B.	2551	1580	1580	1700	2040		1860
Caribou, Me.	2589	1620	1430	1550	1860	1710	
Spread	—38	—40	+150	+150	+180	+330	+150

* X162 refers to *Ex Parte 162, Increased Railway Rates, 1946*, 266 I. C. C. 537, which authorized maximum increase on potash of $1.20 per ton.

14.

In its Docket 30578, *Consolidated Rendering Co.* v. *Atchison, Topeka & Santa Fe Railway Co.*, 300 I. C. C. 87, [fol. 33] decided March 18, 1957, the Interstate Commerce Commission, acting under Section 1 of the Interstate Commerce Act (49 U. S. C. § 1), held, among other things, that rates on potash that were in effect between January 5 and May 5, 1948, from Carlsbad and Loving to Port Huron, Detroit, Buffalo, and Vanceboro were unreasonably high, and prescribed, retroactively, maximum reasonable rates on a lower level. A comparison of the rates in effect to these border crossings at the time these shipments moved with the rates subsequently prescribed as maximum rea-

sonable rates to those points is as follows (rates shown are on a per-ton basis):

Border Point	Rate at Time of Movement	Rate Later Prescribed as Maximum Reasonable	Difference
Port Huron	$13.32	$12.70	62¢
Detroit	13.32	12.70	62¢
Buffalo	14.04	13.30	74¢
Vanceboro	17.28	16.00	128¢

Shippers who had paid charges on shipments terminating at these border points during the period January 5 through May 5, 1948, were held to be entitled to reparation measured by the difference between the rates found unreasonably high and the rates found to be maximum reasonable rates.

15.

Plaintiff herein filed a complaint with the Interstate Commerce Commission on October 30, 1959, in Docket 33261, *Canada Packers, Ltd.* v. *Atchison, Topeka & Santa Fe Railway Co., et al.*

The rates paid by plaintiff and the rates plaintiff contended were maximum reasonable rates are shown in the following comparisons (rates shown are on a per-ton basis):

Canadian Destination	Rate Charged	Rate Sought	Difference
Toronto, Ont.	$14.60	$13.80	80¢
Welland, Ont.	14.60	13.80	80¢
Montreal, Que.	17.20	16.00	120¢
St. John, N. B.	20.40	18.60	140¢

[fol. 34] Division 2 of the Interstate Commerce Commission issued its report May 24, 1961, in Docket 33261, *Canada Packers, Ltd.* v. *Atchison, Topeka & Santa Fe Railway Co.*, 313 I. C. C. 759. A copy of that report is included as Exhibit B to the complaint herein. In that report the Commission found that the rates charged were unreasonable as alleged in the complaint and prescribed maximum reasonable rates,

on the basis sought by the plaintiff, retroactively for the period in which the shipments had moved.

The defendants in Docket 33261 filed a petition for reconsideration with the Interstate Commerce Commission. That petition was denied by the Commission in an order dated October 9, 1961; a copy of that order is included as Exhibit C to the complaint herein.

Following an examination by the defendants of paid freight bills submitted by the plaintiff, the defendant made certification of the accuracy of plaintiff's compilation of total transportation charges paid on these shipments. Thereafter, the Interstate Commerce Commission issued its order of August 28, 1962, a copy of which is included as Exhibit D to the complaint, and directed payment of reparation to plaintiff by the defendants herein and by the Canadian National Railways and the Canadian Pacific Railway Company, which are not defendants herein.

16.

Defendants have made payment of reparation to plaintiff in a sum less than that shown in the Interstate Commerce Commission's order of August 28, 1962. The difference, excluding interest, is $1,390.55. The principal of the amount paid by defendants was measured by the difference between the rates charged on these shipments up to the international boundary points and the rates to those border points that were prescribed as maximum reasonable rates by the Inter- [fol. 35] state Commerce Commission in the *Consolidated Rendering* case, *supra*. Stated otherwise, the defendants declined to make payment of reparation on that portion of the freight charges that was paid for transportation within Canada.

Canada Packers, Limited, Plaintiff, By: Charles B. Myers, Its Attorney.

The Atchison, Topeka and Santa Fe Railway Company, et al., Defendants, By: Harvey Huston, Their Attorney.

Dated at Chicago, Illinois, this 15th day of January, 1964.

IN THE UNITED STATES DISTRICT COURT

AMENDMENT TO STIPULATION OF FACTS—
Filed January 30, 1964

It is hereby agreed by plaintiff and defendants that Paragraph 16 of the Stipulation of Facts filed herein on January 15, 1964, is inaccurate in certain respects and that the following paragraph be substituted therefor.

16.

Defendants have made payment of reparation to plaintiff in a sum less than the total of the amounts pertaining to the shipments involved herein, as listed in the Interstate Commerce Commission's order of August 28, 1962. The total of those amounts, excluding interest, is $6,694.56. Defendants made payment to plaintiff in the sum of $5,304.01, plus interest. The difference, excluding interest, is $1,390.55. The sum, excluding interest, that was paid by [fol. 36] defendants, was measured by the difference between the total of the amounts pertaining to these shipments as listed in the order of August 28, 1962, and a portion thereof representing the share retained by the Canadian railroads for that part of the transportation that took place beyond the international boundary. Stated otherwise, defendants declined to make payment of reparation on that portion of the freight charges that was paid for transportation within Canada.

Canada Packers, Limited, Plaintiff, By: Charles B. Myers, Its Attorney.

The Atchison, Topeka and Santa Fe Railway Company, et al., Defendants, By: Harvey Huston, Their Attorney.

Dated at Chicago, Illinois, this 30th day of January, 1964.

IN THE UNITED STATES DISTRICT COURT

FINDINGS OF FACT AND CONCLUSIONS OF LAW
—Entered March 20, 1964

This cause, having been submitted to the Court on a Stipulation of Facts by the parties hereto and the Court having fully considered such Stipulation and the arguments of counsel as set forth in their respective briefs, now makes the following findings, conclusions and order herein:

FINDINGS OF FACT

The parties are in agreement as to the facts involved in this proceeding, and the Court hereby adopts their Stipulation of Facts, as amended, as its findings of fact in this cause.

[fol. 37] CONCLUSIONS OF LAW

1. This Court has jurisdiction of the subject matter and the parties under the provisions of Section 16(2) of the Interstate Commerce Act, 49 U. S. C. 16(2).
2. The Interstate Commerce Act and the jurisdiction of the Commission extend to transportation from or to any place in the United States to or from a foreign country, but only insofar as such transportation takes place within the United States, 49 U. S. C. 1(1)(2).
3. All charges for transportation must be just and reasonable, and every unjust and unreasonable charge is prohibited and declared to be unlawful, 49 U. S. C. 1(5).
4. The rates and charges applicable and assessed on the transportation in question were the joint through international rates.
5. The defendants' failure to establish lawful rates applicable to the transportation performed by them within the United States violated the Act, and plaintiff was compelled to pay the joint through international rates.

6. The Commission had jurisdiction to determine whether plaintiff was damaged as a result of defendants' violation of the Act.

7. The findings of fact and conclusions of law stated in the report and order of the Interstate Commerce Commission, holding the joint through international rates unjust and unreasonable and awarding damages to plaintiff, are supported by substantial evidence and are not arbitrary, capricious or otherwise unlawful.

8. The assessment and collection of an unjust and unreasonable charge is a tort for which the defendants are jointly and severally liable.

[fol. 38]

9. The defendants are jointly and severally liable for the damage incurred by plaintiff without regard to the proportion of charges attributable to the transportation in the foreign country and without regard to the portion paid the foreign carrier.

ORDER FOR JUDGMENT

Wherefore, in accordance with the foregoing findings of fact and conclusions of law, judgment is ordered for plaintiff and jointly and severally against each of the named defendants in the sum of $1,390.55, plus interest at the rate of 4 per cent per annum from the date of payment of the freight charges on the aforesaid shipments, to the date of this order, which interest amounts to $884.75. It is further ordered that plaintiff is entitled to a reasonable attorney's fee in the amount of $750.00, and that defendants pay the costs of the action.

Enter:

Hubert L. Will, District Judge.

Dated: March 20, 1964.

[fol. 39]

IN THE UNITED STATES DISTRICT COURT

NOTICE OF APPEAL—Filed April 17, 1964

To: Charles B. Myers, 611 Field Building, Chicago 3, Illinois.

Notice is hereby given that The Atchison, Topeka and Santa Fe Railway Company, and all of the other defendants in this action above named, hereby appeal to the United States Court of Appeals for the Seventh Circuit from:

1. The judgment ordered and entered on March 20, 1964, jointly and severally against all of the named defendants in the sum of $1,390.55 plus interest at the rate of 4% per annum from the date of payment of the freight charges on the shipments to the date of the order which interest amounts to $884.75.

2. The order entered on March 20, 1964, granting plaintiff's attorneys' fees of $750.00 plus costs of the action.

3. The conclusions of law entered on March 20, 1964.

Floyd Stuppi, Harvey Huston, Gus Svolos, 80 East Jackson Boulevard, Chicago 4, Illinois, HA. 7-4900, Attorneys for Defendants-Appellants.

Dated: April 17, 1964.

[fol. 40]

IN THE UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

No. 14659 September Term, 1964—January Session, 1965

CANADA PACKERS, LIMITED, a Canadian corporation,
Plaintiff-Appellee,

v.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, et al., Defendants-Appellants.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

OPINION—March 2, 1965

Before Hastings, Chief Judge, and Duffy and Schnackenberg, Circuit Judges.

Schnackenberg, Circuit Judge. Defendants, The Atchison, Topeka and Santa Fe Railway Company and several other railroads[1] appeal (1) from a judgment of the district court for $1390.55 and interest thereon, and (2) an order granting plaintiff attorneys' fees, plus costs of the action. [fol. 41] Plaintiff in its complaint sought enforcement of an order of the Interstate Commerce Commission, pursuant

[1] The Chesapeake and Ohio Railway Company, Chicago South Shore and South Bend Railroad, Detroit, Toledo and Ironton Railroad Company, Elgin, Joliet and Eastern Railway Company, Grand Trunk Western Railroad Company, New York Central Railroad Company, The New York, Chicago and St. Louis Railroad Company, Wabash Railroad Company.

to the Interstate Commerce Act, 49 U.S.C.A. § 1, *et seq.*, against defendants as common carriers.

The complaint alleges that defendants transported carload shipments of potash from Carlsbad and Loving, New Mexico, to plaintiff at the following points in Canada: Toronto, West Toronto and Welland, Ontario, Montreal, Quebec, and St. John, New Brunswick, and demanded and collected from plaintiff charges which were unjust and unreasonable, in violation of section 1 of said act.

The complaint also alleges that, pursuant to proceedings before it, the Commission on August 28, 1962 entered an order which found that plaintiff herein is entitled to reparation from defendants *"insofar as the transportation took place over their lines in the United States"* [2] and directed defendants and their Canadian connecting carriers to pay plaintiff reparations totaling $6,694.56 plus interest, upon which defendants have paid all that is due except the sum for which suit was here brought.

Defendants contend that they have complied with the terms of the Interstate Commerce Commission's reparation order and no additional amounts are owing to plaintiff. They emphasize that the reparation order of August 28, 1962 was expressly restricted to an award for transportation over lines in the United States. They assert that the amounts listed in the order represent the difference between (a) the total charges paid for the entire transportation service from the New Mexico origins to the Canadian destinations ($14.60 per ton to Toronto and Welland, Ontario, $17.20 to Montreal, Quebec, and $20.40 to Saint John, New Brunswick) and (b) the total charges recomputed retroactively on the basis of maximum rates that are 80¢ per ton lower to Toronto and Welland than those charged ($13.80 in lieu of $14.60), 120¢ lower to Montreal ($16.00 in lieu of $17.20), and 140¢ [3] lower to Saint John ($18.60 in lieu of $20.40).

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[2] Italics supplied for emphasis.

[3] This figure of 140¢ was stipulated in this case. It probably should have been 180¢.

They argue that the amounts listed in the Commission's order would require refunds of charges paid for trans- [fol. 42] portation performed by Canadian railroads within Canada as well as on transportation performed within the United States.

1. At the time the shipments in question moved in this case, defendants maintained certain freight rates on potash from Carlsbad and Loving, New Mexico, to the United States border points where these shipments crossed into Canada. In a decision issued March 18, 1957, *Consolidated Rendering Co.* v. *Atchison, Topeka & Santa Fe Ry. Co., et al.*, 300 I. C. C. 87, the Commission held that the freight rates on potash that had been in effect between January 5, 1948 and May 5, 1948 from Carlsbad and Loving, New Mexico, to Detroit and Port Huron, Michigan, and Vanceboro, Maine, were unreasonably high, and prescribed, retroactively, maximum reasonable rates on a lower level. A comparison of the rates in effect to these border crossings, at the time plaintiff's shipments moved, with the rates subsequently prescribed (in the *Consolidated Rendering* case) as maximum reasonable rates to those points, is as follows (rates shown are on a per-ton basis):

Border Point	Rates At Time of Movement	Rates Later Prescribed As Maximum Reasonable	Difference
Detroit	$13.32	$12.70	62¢
Port Huron	13.32	12.70	62¢
Vanceboro	17.28	16.00	128¢

In the present proceeding, the Commission in 1962 held that the rates charged on the international shipments from Carlsbad and Loving to Toronto, Welland, Montreal and Saint John were unreasonable, and prescribed, retroactively, still lower rates as maximum reasonable rates, and ordered that plaintiff was entitled to reparation in the amount of the difference between the charges collected

and those that would have accrued at the rates found to be reasonable, and thereby made the computations upon which the order of August 28, 1962 was based. While that order purports to limit its effect to transportation over lines in the United States, it is obvious that the computations upon which it is based were not so restricted. [fol. 43] Plaintiff seeks support for the Commission's order in *News Syndicate Co.* v. *N. Y. C. R. R.*, 275 U.S. 179. However, in that case, where there was a through rate from a point in Canada to New York City within the United States, the court pointed out, at 186-7, that it was the duty of the railroad to establish a rate from the international boundary to New York City, in the absence of which the shipper had been compelled to pay the through charges. The court sustained the jurisdiction of the Commission to determine the reasonableness of the charges exacted, *i. e.*, the through rate. In the case at bar, rates from New Mexico to the border points were in effect and hence this case is not governed by *News Syndicate*.

Plaintiff also relies on *Lewis, etc. Co.* v. *Southern Pac. Co.*, 283 U.S. 654. However, that case was controlled by *News Syndicate*, as the court expressly stated, at 663. The defendant in *Lewis* is an interstate carrier by railroad and its lines connect at the international boundary at Nogales, Arizona with the line of a Mexican common carrier by railway extending from Navojoa, Sonora. Three carloads of cowpeas were shipped from Navojoa to San Francisco, California, on through bills of lading issued by the foreign line and the rate charged was that stated in a joint tariff filed by the carriers with the Commission and its counterpart in Mexico. A complaint seeking reparations before the Commission alleged that the joint through rate was unreasonable. Defendant moved to dismiss the complaint on the ground that the Commission lacked jurisdiction over rates from points in a foreign country to points in the United States. However, the court pointed out that the tariff did not purport to apply to the American part of such international transportation which

"must be distinguished from a through carload shipment brought to defendant at the boundary by a foreign carrier". The court, at 663, commented upon the failure of defendant carrier to bring forward evidence that a rate on its own line to the international border "had been established as required by the Act."

In the case at bar, defendants met the burden of proving the rates from Carlsbad and Loving, New Mexico to the Canadian border points. We are therefore required to conclude that the latter rates must be considered as a [fol. 44] maximum guide in awarding damages to plaintiff. To conclude otherwise would mean that the defendant railroads would be required to pay reparation to a Canadian consignee on account of freight charges received for transportation performed within Canada by Canadian railroads which are not parties to this action. Such a result clearly is prohibited by the territorial limitation provisions of section 1 of the Interstate Commerce Act. 49 U.S.C.A. §§ 1, *et seq.*

For the reasons herein stated, the judgment and the order from which defendants have appealed are reversed.

Judgment and Order Reversed.

A true Copy:

Teste:

....., Clerk of the United States Court of Appeals for the Seventh Circuit.

[fol. 45]

IN THE UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

No. 14659

CANADA PACKERS, LIMITED, a Canadian corporation,
Plaintiff-Appellee,

vs.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY,
et al., Defendants-Appellants.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

JUDGMENT—March 2, 1965

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgment and the order of the said District Court in this cause appealed from be, and the same are hereby, Reversed, with costs, in accordance with the opinion of this Court filed this day.

[fol. 46]

IN THE UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

[Title omitted]

ORDER DENYING PETITION FOR REHEARING
—April 16, 1965

It Is Ordered by the Court that the petition for a rehearing of this cause, filed by appellee, be, and the same is hereby Denied.

[fol. 47] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 48]

SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER ALLOWING CERTIORARI—February 21, 1966

The petition herein for a writ of certiorari to the United States Court of Appeals for the Seventh Circuit is granted, and the case is placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.